

MONTANA LEGISLATIVE HISTORY

Chapter 472 19 91

Bill H 110 S _____ Original bill & history C

H. Committee on Labor + Employment Relations

S. Committee on Judiciary

Hearing Date(s) Feb 12 ✓ C

Hearing Date(s) Mar 21 ✓ C

Feb 16 ✓ C

Mar 23 ✓ C

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Date Out Feb 18 ✓ C

Mar 22 ✓ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

HB 110

HOUSE FINAL STATUS

1/19	3RD READING PASSED	93	0
	TRANSMITTED TO SENATE		
1/21	FIRST READING		
1/21	REFERRED TO JUDICIARY		
1/31	HEARING		
3/08	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/12	2ND READING CONCURRED	49	0
3/13	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		
3/21	SIGNED BY PRESIDENT		
3/22	TRANSMITTED TO GOVERNOR		
3/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 170		

EFFECTIVE DATE: 7/01/91

HB 110 INTRODUCED BY GILBERT

AMEND LAW RELATING TO THE REGULATION
OF BLOOD AND URINE TESTING

1/05	INTRODUCED		
1/05	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/07	FIRST READING		
2/12	HEARING		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/23	2ND READING PASSED	96	0
2/26	3RD READING PASSED	97	0
	TRANSMITTED TO SENATE		
2/27	FIRST READING		
2/27	REFERRED TO JUDICIARY		
3/21	HEARING		
3/23	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/26	2ND READING CONCURRED	48	1
3/27	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/08	2ND READING AMENDMENTS CONCURRED	95	1
4/09	3RD READING AMENDMENTS CONCURRED	95	1
4/12	SIGNED BY SPEAKER		
4/13	SIGNED BY PRESIDENT		
4/15	TRANSMITTED TO GOVERNOR		
4/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 477		

EFFECTIVE DATE: 4/20/91

HB 111 INTRODUCED BY CODY

CLARIFY BOARD OF NURSING AUTHORIZATION
FOR PRESCRIPTIVE AUTHORITY

1/07	INTRODUCED		
1/07	REFERRED TO HUMAN SERVICES & AGING		
1/07	FIRST READING		
1/18	HEARING		
1/19	COMMITTEE REPORT—BILL PASSED		
1/22	2ND READING PASSED	99	0
1/24	3RD READING PASSED	96	0
	TRANSMITTED TO SENATE		
1/25	FIRST READING		
1/25	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
3/13	HEARING		
3/14	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/16	2ND READING CONCURRED	49	0
3/18	3RD READING CONCURRED	49	0

REP. JOHNSON asked Mr. Simpson if the railroad workers were allowed to be covered under Workers' Compensation and the highest rate was paid, would less money be paid than what is currently being done. Mr. Simpson said he didn't know.

Closing by Sponsor:

REP. CONNELLY said FELA is specifically tailored toward the rail industry and Montana Workers' Compensation is not. The negligent liability provisions in FELA maintain corporate accountability. Most of the injuries are not from big accidents, for example, in Whitefish a switchman got both legs cut off because the engineer couldn't see the clear signal. Workers' Compensation can't afford to include the high accidents from this big industry. 85 percent of FELA cases are settled without the worker having to hire a lawyer. FELA costs from the private rail industry would be changed over to public tax payers.

HEARING ON HB 110

Presentation and Opening Statement by Sponsor:

REP. BOB GILBERT, House District 22, Sidney, stated interstate motor carriers are required by federal law to be tested for drugs. The federal laws do not apply to intrastate. If the employer is an interstate and an intrastate carrier and obeys the federal law, he violates Montana law and vice versa. He presented amendments. EXHIBIT 2

Proponents' Testimony:

Curt Laingen, Montana Motor Carriers Association, presented written testimony. EXHIBIT 3

Steve Browning, IBM, stated illegal drugs are a problem in Montana. According to the Drug Enforcement Administration, two thirds of illegal drugs consumed are consumed in the United States. 70 percent of those illegal drugs are consumed by working people. The law being amended, 39-2-304, was enacted in 1987. It was a revision to the prohibition against unreliable lie detectors. This law has made drug testing a crime. Any drug testing should be sensitive to the concerns of privacy, confidentiality, and reliability. Drug testing should not be punitive. All employees should be tested. The 1987 law said only applicants could be tested for jobs that are involved in hazardous work, public safety, or fiduciary responsibility. HB 110 adds jobs in the commercial transportation industry.

James Tutwiler, Montana Chamber of Commerce, stated businesses in America have a responsibility to control the use of drugs. A credible, scientifically-sound drug testing program should address the problem of drug abuse in the workplace. Montana would be uniform with the mandated federal legislation.

Charles Brooks, Executive Vice President, Montana Retail Association, stated he was appearing on behalf of Safeway. Montana law must be brought into conformity with the federal law to allow the testing of drivers which are particularly coming from Washington to Montana and vice versa.

Opponents' Testimony:

Dan Edwards, International Representative, Oil, Chemical and Atomic Workers Union, presented written testimony and a handout. EXHIBIT 4

Scott Crichton, Executive Director, American Civil Liberty Union, presented written testimony. EXHIBIT 5

Don Judge, Executive Secretary, AFL-CIO, stated that if the bill is passed legislators should be tested before they are allowed to apply or run for public office. State and school district employees should be tested before being allowed to work. There are about 10,000 state government employees, and the employers should pay for the tests at \$125 each. The title of the bill includes, "jobs involving commercial transportation of persons or commodities if the testing is required by federal law." In agriculture the commercial products being transported are wheat, cattle, sheep, and etc. The workers may be high school kids working in the summer for their parents or neighbors. That employer, who is a farmer or rancher, must have the following procedures in place: a drug testing policy, guaranteed safe transportation of the urine specimen to the testing place and back, a rehabilitation program, procedures for firing the worker, and the employer will have to defend himself if the employee files suit over the accuracy of the testing. The custom cutter that comes through Montana will have to comply with the regulations and those costs will be passed on to the farmer. The person who delivers potato chips to stores will be affected. The drug problem in Montana does not warrant the imposition of this law.

Questions From Committee Members:

REP. BENEDICT asked Mr. Browning where he got the 70 percent figure and what it applies to. Mr. Browning said he got the figure from a book called Building a Drug Free Workforce. 70 percent of all people who consume drugs work for a living.

REP. WHALEN asked Mr. Browning if he knew what the current remedy under Montana law would be pertaining to the provision on Page 3, Paragraph 4, "adverse action may not be taken against a person if the person presents a reasonable explanation or medical opinion indicating that the results of the test were not caused by alcohol consumption or illegal drug use". There is no remedy provided to that person if adverse action is taken, for example, if an employee is discharged. Mr. Browning said there would be no adequate basis for discharge if a person had a reasonable

explanation or medical opinion, and he would be compensated for the wrongful discharge. REP. WHALEN said the current Wrongful Discharge From Employment Act has very severe limitations on the damages an employee is entitled to. REP. WHALEN asked Mr. Browning if he would support an elimination of those caps on damages if this change were made in the law. Mr. Browning said no.

Closing by Sponsor:

REP. GILBERT said that the amendments clarify that there is no federal provision to require drug testing on intrastate traffic. There are two sets of laws, and it is impossible to obey both. The intent of this bill is not to test all working people in Montana. It is the same as federal testing, which includes pre-employment, periodic testing meaning every two years at the time of a physical as required by Department of Transportation Regulations, and probable cause. 50 percent of the people tested under probable cause were found to be on drugs. These people are hazardous to public safety and health. The laws prohibit people to drive under the influence of alcohol; there is no difference in being under the influence of alcohol or drugs. The state policy says the testing is a violation of privacy. Where does privacy stop and concern start? Drug tests are more accurate than people believe. The specimen is given to the doctor who sends it to a lab certified by the Department of Transportation, which is one of the requirements of union contracts. The employers pay the costs for drug testing. Performance tests indicate a person's ability to drive, but they don't identify if he is on drugs. If an interstate carrier is found to be under the influence of drugs, he can no longer drive interstate, but he can drive intrastate in the State of Montana. Farmers are not considered commercial by the State of Montana nor by the Department of Transportation, therefore, they are exempt. Commercial custom cutters, who are coming from out of state, are covered by the Federal Interstate Commerce Law and have to be tested anyway. The person delivering potato chips is exempt because he is under 26,000 pounds gross and doesn't fall under Department of Transportation regulations. This bill will not put drug users in jail but will try to get them rehabilitated.

HEARING ON HB 525

Presentation and Opening Statement by Sponsor:

REP. TOM NELSON, House District 95, Billings, stated HB 525 would require discounts on auto insurance premiums charged to employees at jobs covered by qualified drug testing programs. Currently there are no such programs in Montana. Workplace drug testing is outlawed in Montana except in the most limited circumstances. In 1987 the Legislature adopted a law that provided criminal penalties for any employer who conducted drug testing under most circumstances. The only drug testing permitted is for applicants applying for high-risk jobs and employees where the employer had

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE 2/12/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JERRY DRISCOLL	✓		
REP. MARK O'KEEFE	✓		
REP. GARY BECK	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. ROYAL JOHNSON	✓		
REP. THOMAS LEE	✓		
REP. BOB PAVLOVICH	✓		
REP. JIM SOUTHWORTH	✓		
REP. FRED THOMAS		✓	
REP. DAVE WANZENRIED	✓		
REP. TIM WHALEN	✓		
REP. TOM KILPATRICK, V.-CHAIR	✓		
REP. CAROLYN SQUIRES, CHAIR	✓		

Amendments to House Bill No. 110
White Reading Copy

Requested by Rep. Gilbert
For the Committee on

Prepared by Valencia Lane
January 9, 1991

1. Title, line 7.
Following: "THE"
Insert: "INTRASTATE"

2. Title, lines 8 and 9.
Following: "COMMODITIES" on line 8
Strike: remainder of line 8 through "LAW" on line 9

3. Title, line 10.
Strike: "FEDERAL"

4. Page 2, line 2.
Following: "the"
Insert: "intrastate"

5. Page 2, lines 3 and 4.
Following: "commodities" on line 3
Strike: remainder of line 3 through "law" on line 4

6. Page 2, lines 9 and 10.
Following: "use" on line 9
Strike: remainder of line 9 through "law" on line 10
Insert: ", except for employment in jobs involving the intrastate
commercial transportation of persons or commodities"

7. Page 3, line 5.
Following: "required by"
Insert: "law or"

8. Page 3, line 6.
Strike: "or federal law"

2-12-91

HB 110

HOUSE BILL NO. 110
INTRODUCED BY GILBERT

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAW RELATING TO THE REGULATION OF BLOOD AND URINE TESTING; ALLOWING BLOOD AND URINE TESTING OF EMPLOYEES AND JOB APPLICANTS IN JOBS INVOLVING THE ^{INTRASTATE} COMMERCIAL TRANSPORTATION OF PERSONS AND COMMODITIES ~~IF THE TESTING IS REQUIRED BY FEDERAL LAW~~; ALLOWING THE RELEASE OF TEST RESULTS AS REQUIRED BY ~~FEDERAL~~ LAW; AMENDING SECTION 39-2-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-2-304, MCA, is amended to read:

"39-2-304. Lie detector tests prohibited -- regulation of blood and urine testing. (1) No A person, firm, corporation, or other business entity or representative thereof shall may not require:

(a) as a condition for employment or continuation of employment, any person to take a polygraph test or any form of a mechanical lie detector test;

(b) as a condition for employment, any person to submit to a blood or urine test, except for employment in:

(i) hazardous work environments or in;

(ii) jobs the primary responsibility of which is

security, public safety, or fiduciary responsibility; or
(iii) jobs involving the ^{intrastate} commercial transportation of persons or commodities ~~if the testing is required by federal law~~ and

(c) as a condition for continuation of employment, any employee to submit to a blood or urine test unless the employer has reason to believe that the employee's faculties are impaired on the job as a result of alcohol consumption or illegal drug use ~~if the testing is required by federal law~~.

(2) Prior to the administration of a drug or alcohol test, the person, firm, corporation, or other business entity or its representative shall adopt a written testing procedure and make it available to all persons subject to testing. A testing procedure must provide for the:

(a) collection of a blood or urine specimen in a manner that minimizes invasion of personal privacy while ensuring the integrity of the collection process;

(b) collection of a quantity of specimen sufficient to ensure the administration of several tests;

(c) collection, storage, and transportation of the specimen in tamper-proof containers;

(d) adoption of chain-of-custody documentation procedures identifying how the specimen was handled and tested;

1 (e) verification of test results by two or more
2 different testing procedures before judging a test positive;
3 and

4 (f) prohibition of the release of test results, except
5 as authorized by the person tested or as required by a court ^{law or}
6 of law ~~or federal law~~.

7 (3) The person, firm, corporation, or other business
8 entity or its representative shall provide a copy of drug or
9 alcohol test results to the person tested and provide him
10 the opportunity, at the expense of the person requiring the
11 test, to obtain a confirmatory test of the blood or urine by
12 an independent laboratory selected by the person tested. The
13 person tested must be given the opportunity to rebut or
14 explain the results of either test or both tests.

15 (4) Adverse action may not be taken against a person
16 tested under subsections (1)(b), (1)(c), (2), and (3) if the
17 person tested presents a reasonable explanation or medical
18 opinion indicating that the results of the test were not
19 caused by alcohol consumption or illegal drug use.

20 (5) A person who violates this section is guilty of a
21 misdemeanor."

22 NEW SECTION. Section 2. Effective date. [This act] is
23 effective on passage and approval.

-End-

Date submitted: 2/12/91
HB 110
Curt Laingen

Madam Chairman.....Members of the Committee, for the record, my name is Curt Laingen, Director of Safety for the Montana Motor Carriers Association.

A very important part of the commercial trucking industry's safety program is the drug testing program and MMCA strongly supports the passage of HB 110. Without its passage, the intrastate motor carrier industry cannot carry out the mandated federal transportation drug testing program in Montana.

MMCA has some 300 motor carrier members, 90% of whom operate in interstate commerce; some 200 log trucking members and some 150 livestock haulers, 90% of whom operate solely in intrastate commerce. Many of the interstate motor carrier members operate in both interstate and intrastate commerce. As of December 21, 1990, all interstate carriers and single owner operators must comply with federal drug testing requirements.

Under current Federal Department of Transportation Motor Carrier Safety rules, all operators...employee drivers and independent owner-operators...of commercial motor vehicles, those over 26,000 pounds gross weight and those under 26,000 pounds transporting people and/or hazardous materials, must be subject to a qualified drug testing requirement. The Federal rules stipulate that the motor carrier employer, must institute a drug testing program under the strict parameters set out in federal rules (CFR Part 40).

For the information and benefit of the committee, I have attached a copy of the federal rules to this statement.

The rules spell out specific requirements for a drug testing policy to be adopted by the carrier, the drugs to be tested for, collection site procedures, testing and reporting procedures, and under what circumstances tests are to be performed.

Montana has adopted most all the Federal DOT Motor Carrier Safety Rules for operation by intrastate motor carriers of commodities and passengers except the rules dealing with drug testing.

Under Montana law, intrastate carriers are precluded from requesting blood and urine samples as a condition for employment and continuous

employment. Only probable cause is grounds for testing under the law.

Motor carriers in Montana are faced with a serious problem of how to establish and comply with a drug-free operation when their drivers operating in Montana cannot be tested. HB 110 is attempting to change a present law that mandates a policy to which Legislature and our Courts must adhere that says, in effect, that all drug user drivers, weeded out of the interstate motor carriage, can operate freely in Montana's intrastate motor carriage industry. Is this what we want?

Under this policy, the transportation industry and the federal government are mandating a drug-free transportation system to protect the public, while it would appear that Montana's transportation slogan is, "Come drive in Montana, where a driver can rest....cause we don't test."

Intrastate bus drivers can transport passengers without being tested and worse, "contracted for" school bus drivers do not have to be tested. It is hard to imagine that anyone can feel comfortable with that kind of policy.

A Montana carrier is concerned enough about his business and the well-being of his employees to conduct strict interviews, employee background checks and maintain a high standard for employment, but cannot complete the driver screening process to include drug testing.

HB 110, allowing the drug testing of commercial transportation employees, is a needed and necessary piece of legislation in Montana. With its adoption, Montana can be free to consider the adoption, by reference, of the Federal DOT Controlled Substances Testing rules. We urge your adoption of HB 110. Thank you.

be a regularly employed driver of that motor carrier and who drives a vehicle that:

- (1) Is a truck (as defined in §390.5 of this subchapter), and
- (2) Is operated in retail delivery service, and
- (3) Is transporting combustible liquids (as defined in §173.115 of this title), and
- (4) Is operated in intrastate commerce.

SUBPART H - CONTROLLED SUBSTANCES TESTING

(Note: For readers convenience ATA has published 49 CFR Part 40 - Procedures For Transportation Workplace Drug Testing Programs as Appendix 1 to these regulations).

§391.81 Purpose and scope.

(a) The purpose of this subpart is to reduce highway accidents that result from driver use of controlled substances, thereby reducing fatalities, injuries, and property damage.

(b) This subpart prescribes minimum Federal Safety standards to detect and deter the use of controlled substances as defined in 49 CFR Part 40 (marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP)).

(c) As part of reasonable cause drug testing programs established pursuant to this subpart, motor carriers may test for drugs in addition to those specified in this part only with approval granted by the Federal Highway Administrator under 49 CFR Part 40 and for substances for which the Department of Health and Human Services has established an approved testing protocol and positive threshold.

§391.83 Applicability.

(a) This subpart applies to motor carriers and persons who operate a commercial motor vehicle as defined in this subpart in interstate commerce and are subject to the driver qualification requirements of Part 391 of this subchapter.

(b) This subpart shall not apply to any person for whom compliance with this subpart would violate the domestic laws or policies of another country.

(c) This subpart is not applicable until January 2, 1992, with respect to any foreign-based employee of a foreign-domiciled carrier. On or before July 1, 1991, the Administrator shall issue any necessary amendment resolving the applicability of this subpart to such employee on and after January 2, 1992.

§391.85 Definitions.

As used in this subpart-

"Collection site" means a place where individuals present themselves for the purpose of providing body fluid or tissue samples to be analyzed for specified controlled substances. The site must possess all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and transportation or shipment of the samples to a laboratory.

"Commercial motor vehicle" means any self-propelled or towed vehicle used on public highways

in interstate commerce to transport passengers or property when:

(a) The vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 or more pounds; or

(b) The vehicle is designed to transport more than 15 passengers, including the driver; or

(c) The vehicle is used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under the Hazardous Materials Transportation Act (49 U.S.C. App. 1801-1813).

"Controlled substances" has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR 1308).

"Drivers subject to testing" means employee drivers and contract drivers under contract for 90 days or more in any period of 365 days.

"Drug" means any substance (other than alcohol) that is a controlled substance as defined in this section and 49 CFR part 40.

"FHWA" means the Federal Highway Administration, U.S. Department of Transportation.

"Interstate commerce" means trade, traffic, or transportation in the United States which is between a place in a State and a place outside of such State (including a place outside of the United States) or is between two places in a State through another State or a place outside of the United States.

"Medical practitioner" means a licensed doctor of medicine (MD) or osteopathy (DO) or a doctor of dental surgery (DDS) authorized to practice by the State in which the person practices.

"Medical Review Officer" means a licensed doctor of medicine or osteopathy with knowledge of drug abuse disorders that is employed or used by a motor carrier to conduct drug testing in accordance with this part.

"Motor carrier" means a for-hire motor carrier or a private motor carrier of property. The term "motor carrier" includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. For purposes of subchapter B, the definition of "motor carrier" includes the terms "employer" and "exempt motor carrier."

"Random selection process" means that drug tests are unannounced and that every commercial motor vehicle driver of a motor carrier has an equal chance of being selected for testing.

"Reasonable cause" means that the motor carrier believes the actions or appearance or conduct of a commercial motor vehicle driver, on duty as defined in §395.2 of this subchapter, are indicative of the use of a controlled substance.

§391.87 Notification of test results and record-keeping.

(a) The MRO shall report to the motor carrier whether a driver's test was positive or negative and, if positive, the identity of the controlled substance for which the test was positive.

(b) A motor carrier shall notify its driver or driver-applicant of the results of a controlled substance test conducted under this subpart.

(c) A motor carrier shall notify--

(1) A driver-applicant of the results of a pre-employment controlled substance test conducted under this subpart provided the driver-applicant requests such results within 60 days of being notified of the disposition of the employment application; or

(2) A driver of the results of a periodic, random, reasonable cause, or post-accident test conducted under this subpart, provided the results were positive. The driver must also be advised of what controlled substance was identified in any positive test.

(d) A motor carrier shall ensure that all records related to the administration and results of the drug testing program for its drivers subject to the testing requirements are maintained for a minimum period of 5 years except that individual negative test results shall be maintained for a minimum of 12 months.

(e) A medical review officer shall be the sole custodian of individuals test results. The medical review officer shall retain the reports of individual test results for a minimum of 5 years.

(f) A motor carrier shall retain in the driver's qualification file such information that will indicate only the following:

- (1) The types of controlled substances testing for which the driver submitted a urine specimen. *CA2212*
- ✓(2) The date of such collection.
- ✓(3) The location of such collection.
- ✓(4) The identity of person or entity:
- ✓(i) Performing the collection,
- ✓(ii) Analysis of the specimens, and
- ✓(iii) Serving as the MRO.

(5) Whether the test finding was "positive" or "negative" and, if "positive," the controlled substances identified in any positive test.

(g) A motor carrier shall produce upon demand and shall permit the Federal Highway Administrator to examine all records related to the administration and results of controlled substance testing performed under this part.

(h) A motor carrier shall maintain an annual (calendar year) summary of the records related to the administration and results of the controlled substance testing program performed under this subpart. This summary shall include at a minimum:

- (1) The total number of controlled substance tests administered;
- (2) The number of controlled substance tests administered in each category (i.e., pre-employment, periodic, reasonable cause, and random);
- (3) The total number of individuals who did not pass a controlled substance test;
- (4) The total number of individuals who did not pass a controlled substance test by testing category;
- (5) The disposition of each individual who did not pass a controlled substance test;
- (6) The number of controlled substances tests performed by a laboratory that indicated evidence of a prohibited controlled substance or metabolite in the screening test in a sufficient quantity to warrant a confirmatory test;
- (7) The number of controlled substance tests performed by a laboratory that indicated evidence of a prohibited controlled substance or metabolite in the confirmatory test in a sufficient quantity to be reported as a "positive" finding to the medical

(8) The number of controlled substance tests that were performed by a laboratory that indicated evidence of a prohibited controlled substance or metabolite in the confirmatory test in a sufficient quantity to be reported as a "positive" finding by substance category (e.g., marijuana, cocaine, opium, PCP, or amphetamine).

§391.89 Access to individual test results or test findings.

(a) No person may obtain the individual tests results retained by a medical review officer, and no medical review officer shall release the individual test results of any employee to any person, without first obtaining written authorization from the tested employee. Nothing in this paragraph shall prohibit a medical review officer from releasing, to the employing motor carrier, the information delineated in §391.87 (e) of this subpart.

(b) No person may obtain the information delineated in §391.87 (e) of this part and retained by a motor carrier, and no motor carrier shall release such information about any employee or previous employee, without first obtaining written authorization from the tested employee.

§391.93 Implementation schedule.

(a) This rule is effective December 21, 1983.

(b) Motor carriers with 50 or more "drivers subject to testing" on December 21, 1989, are required to implement a controlled substance testing program which meets the requirements of this subpart by:

- (1) December 21, 1989, for "drivers subject to testing," and
- (2) December 21, 1990, for all commercial motor vehicle drivers.

(c) Motor carriers with less than 50 "drivers subject to testing" on December 21, 1989 are required to implement a controlled substance testing program by December 21, 1990, for all commercial motor vehicle drivers.

(d) During the first 12 months following the institution of random drug testing pursuant to this rule, a motor carrier shall meet the following conditions:

- (1) The random drug testing is spread reasonably through the 12-month period;
- (2) The last test collection during the year is conducted at an annualized rate of 50 percent; and
- (3) The total number of tests conducted during the 12 months is equal to at least 25 percent of the drivers subject to testing.

§391.95 Drug use prohibitions.

(a) No driver shall be on duty, as defined in §395.2 of this subchapter, if the driver uses any controlled substances, except as provided in §391.97 of this part.

(b) No driver shall be on duty, as defined in §395.2 of this subchapter, if the driver tests positive for use of controlled substances, except as provided in §391.97 of this part.

(c) A person who tests positive for the use of a controlled substance, as defined in 49 CFR Part 40, is medically unqualified to operate a commercial motor vehicle.

(d) A person who refuses to be tested under provisions of this subpart shall not be permitted to operate a commercial motor vehicle. Such refusal shall be treated as a positive test and subject the driver to the restrictions contained in paragraph (c)

*Chairman of Committee
on Highway Safety*

§391.97-§391.105

§391.97 Prescribed drugs.

(a) *Affirmative defense.* Any driver who is alleged to have violated §391.95 of this subpart shall have available as an affirmative defense, to be proven by the driver through clear and convincing evidence, the his/her use of a controlled substance (except for methadone) was prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties.

(b) The MRO shall afford a tested individual the opportunity to discuss a positive test result with the MRO before reporting the positive test result to the motor carrier. If an MRO, after making and documenting all reasonable efforts is unable to contact a tested person, the MRO shall contact a designated management official of the motor carrier to arrange for the individual to contact the MRO prior to going on duty. The MRO may verify a positive test without having communicated with the driver about the results of the test if:

(1) The driver expressly declines the opportunity to discuss the results of the test, or

(2) Within 5 days after a documented contact by a designated management official of the motor carrier instructing the driver to contact the MRO, the driver has not done so.

(c) All positive tests reported to the motor carrier by the MRO in which the MRO did not discuss the results with the driver shall be so noted and be accompanied by complete documentation of the MRO's efforts to contact the driver including contacts with a motor carrier's designated management official.

(d) The rules in this subpart do not prohibit a motor carrier from requiring a driver to notify the motor carrier of therapeutic drug use.

§391.99 Reasonable cause testing requirements.

(a) A motor carrier shall require a driver to be tested, upon reasonable cause, for the use of controlled substances.

(b) A driver shall submit to testing, upon reasonable cause, for the use of controlled substances when requested to do so by the motor carrier.

(c) The conduct must be witnessed by at least two supervisors or company officials, if feasible. If not feasible, only one supervisor or company official need witness the conduct. The witness or witnesses must have received training in the identification of actions, appearance, or conduct of a commercial motor vehicle driver which are indicative of the use of a controlled substance.

(d) The documentation of the driver's conduct shall be prepared and signed by the witnesses within 24 hours of the observed behavior or before the results of the tests are released, whichever is earlier.

§391.101 Reasonable cause testing procedures.

(a) A motor carrier shall ensure that the driver is transported immediately to a collection site for the collection of a urine sample.

(b) A motor carrier shall ensure that the test performed under the requirements of §391.99 of this Subpart conforms with 49 CFR Part 40 and this Subpart.

§391.103 Pre-employment testing requirements.

(a) A motor carrier shall require a driver-applicant who the motor carrier intends to hire or

use to be tested for the use of controlled substances as a prequalification condition.

(b) A driver-applicant shall submit to controlled substance testing as a prequalification condition.

(c) Prior to collection of a urine sample under §391.107 of this subpart, a driver-applicant shall be notified that the sample will be tested for the presence of controlled substances.

(d) *Exceptions.* (1) A motor carrier may use a driver who is a regularly employed driver of another motor carrier without complying with paragraph (a) of this section, if the driver meets the requirement of §391.65 of this subchapter.

(2) A motor carrier may use a driver who is not tested by the motor carrier without complying with paragraph (a) of this section, provided the motor carrier assures itself

(i) That the driver has participated in a drug testing program that meets the requirements of this subpart within the previous 30 days and,

(ii) While participating in that program, was either

(A) tested for controlled substances within the past 6 months (from the date of application with the motor carrier) or

(B) participated in the drug testing program for the previous 12 months (from the date of application with the motor carrier).

(3) A motor carrier who exercises either paragraphs (d)(1) or (d)(2) of this section shall contact the controlled substances testing program in which the driver participates or participated and shall obtain the following information:

(i) Name and address of the program.

(ii) Verification that the driver participates or participated in the program.

(iii) Verification that the program conforms to 49 CFR Part 40.

(iv) Verification that the driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances.

(v) The date the driver was last tested for controlled substances.

(vi) The results, positive or negative, of any test taken.

(4) The motor carrier shall retain the information required by this paragraph in the driver's qualification file required under §391.51 of this part.

(5) A motor carrier who uses, but does not employ, such a driver more than once a year must assure itself once every 6 months that the driver participates in a controlled substances testing program that meets the requirements of this subpart.

§391.105 Biennial (periodic) testing requirements.

(a) A motor carrier shall require a driver to be tested in accordance with the procedures set forth in this subpart and Part 40 of this title at least once every two years commencing with the driver's first medical examination required under §391.45 of this part after the motor carrier's implementation of a drug testing program in accordance with this subpart.

(b) *Exception.* A motor carrier may use a driver who participates in a drug testing program of another motor carrier or controlled substance test consortium.

(c) *Exceptions:* A motor carrier may discontinue

periodic testing after a driver has been tested at least once under

(1) The requirements of paragraph (a) of this section;

(2) The requirements of §391.103 of this Subpart; or

(3) The requirements of §391.109 of this Subpart, and the motor carrier is testing its drivers at a 50 percent rate under its random testing program as required by §391.109 of this Subpart.

§391.107 Pre-employment and biennial testing procedures.

(a) The sample shall consist of a urine specimen.

(b) A motor carrier shall ensure that the test performed under the requirements of §391.105 of this Subpart conforms with 49 CFR Part 40 and this Subpart.

§391.109 Random testing requirements.

(EDITOR'S NOTE: Implementation of random testing is deferred until further notice.)

(a) The number of tests conducted under this section annually shall equal or exceed 50 percent (50%) of the average number of commercial motor vehicle driver positions for which testing is required to be tested under this subpart.

(b) A motor carrier shall use a random selection process to select and request a driver to be tested for the use of controlled substances.

(c) A driver shall submit to controlled substance testing when selected by a random selection process used by a motor carrier.

(d) *Exception.* A motor carrier may use the results of another's controlled substances testing program that a driver participates in to meet the requirements of this section provided that the motor carrier obtains the following information from the controlled substances testing program entity:

(1) Name and address of the program.

(2) Verification that the driver participates in the program.

(3) Verification that program conforms to the 49 CFR Part 40.

(4) Verification that driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances.

(5) The date the driver was last tested for controlled substances.

(6) The results, positive or negative, of any tests taken.

§391.111 Random testing procedures.

(a) The sample shall consist of a urine specimen.

(b) A motor carrier shall ensure that the test performed under the requirements of §391.109 of this Subpart conforms with 49 CFR Part 40 and this Subpart.

§391.113 Post accident testing requirements.

(EDITOR'S NOTE: Implementation of post accident testing is deferred until further notice.)

(a) A driver shall provide a urine sample to be tested for the use of controlled substances as soon as possible, but no later than 32 hours, after a reportable accident if the driver of the commercial motor vehicle receives a citation for a moving traffic violation arising from the accident.

(b) A driver who is seriously injured and cannot provide a specimen at the time of the accident shall provide the necessary authorization for obtaining hospital reports and other documents that would indicate whether there were any controlled substances in his/her system.

(c) A motor carrier shall provide drivers with necessary information and procedures so that the driver will be able to meet the requirement of paragraph (a) of this section.

§391.115 Post-accident testing procedures.

(a) The sample shall consist of a urine specimen.

(b) A driver shall ensure that a specimen is collected and forwarded to a National Institute on Drug Abuse (NIDA) certified laboratory in a manner which conforms to 49 CFR Part 40.

(c) A motor carrier shall ensure that the test performed under the requirements of Section 391.113 of this Subpart conforms with 49 CFR Part 40 and this Subpart.

§391.117 Disqualification.

(a) *Disqualification for refusal.* Except for a driver who meets the conditions of §391.113(b), a driver shall be disqualified by issuance of a letter of disqualification for a period of 1 year following a refusal to give a urine sample when the driver has been involved in a fatal accident.

(b) *Disqualification for use of controlled substances.*

A driver shall be disqualified by issuance of a letter of disqualification for a period of 1 year for a positive test of controlled substance use when the driver has been involved in a fatal accident.

§391.119 Employee Assistance Program (EAP).

(a) Every motor carrier shall establish an EAP program. The EAP program shall, as a minimum, include-

(1) An educational and training component for drivers which addresses controlled substances;

(2) An education and training component for supervisory personnel and company officials which addresses controlled substances; and

(3) A written statement, on file and available for inspection, at the motor carrier's principal place of business, outlining the motor carrier's EAP.

§391.121 EAP training program.

(a) Each EAP shall consist of an effective training program for the motor carrier's supervisory personnel and all drivers.

(b) The training program must include at least the following elements:

(1) The effects and consequences of controlled substance use on personal health, safety, and the work environment;

(2) The manifestations and behavioral changes that may indicate controlled substance use or abuse; and

(3) Documentation of training given to drivers and motor carrier supervisory personnel.

(c) EAP training programs for all drivers and supervisory personnel must consist of at least 60 minutes of training.

§391.123 After-care monitoring.

After returning to work, drivers who test positive must continue in any after-care program and be subject to follow-up testing for not longer than 60 months following return to work.

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(1) The requirements of paragraph (a) of this section;

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(c) A driver shall submit to controlled substance testing when selected by a random selection process used by a motor carrier.

(d) *Exception.* A motor carrier may use the results of another's controlled substances testing program that a driver participates in to meet the requirements of this section provided that the motor carrier obtains the following information from the controlled substances testing program entity:

(1) Name and address of the program.

(2) Verification that the driver participates in the program.

(3) Verification that program conforms to the 49 CFR Part 40.

(4) Verification that driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances.

(5) The date the driver was last tested for controlled substances.

(6) The results, positive or negative, of any tests taken.

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Oil, Chemical & Atomic Workers
International Union, AFL-CIO

Dan C. Edwards DATE 2/12/91
International Representative
P.O. Box 21635 HB 110
Billings, MT 59104

406 / 669-3253 (Home)

H. B. 110

Testimony of:

Dan C. Edwards, International Representative
Oil, Chemical and Atomic Workers Int'l Union, AFL-CIO
P.O. Box 21635
Billings, MT 59104

Testifying February 12, 1991, before the House Labor and Employment Relations Committee in OPPOSITION to HB 110:

This bill would amend Montana's current good drug testing law to provide for testing where required under federal law. However, such an amendment is not necessary. Where drug testing is mandated by federal law or regulation, the federal regulation preempts state law so this change in current law is not needed.

The concern with the proposal as presented is that it is ambiguous. I can readily see where some zealous federal or state official might interpret these changes to allow changes to State regulations based upon federal regulations without the appropriate notice, hearings, etc. currently required to change intrastate regulation.

An example of this is the situation in 1990 involving the Research and Special Programs Administration of the federal Department of Transportation (RSPA/DOT). RSPA/DOT advised the Montana Public Service Commission that they were required to adopt RSPA/DOT's regulation covering interstate pipelines to apply to intrastate pipelines. This Union and the MT ACLU challenged that action. After a hearing before the MT Public Service Commission and legal briefing, the MT Public Service Commission appropriately ruled that certain provisions of the RSPA/DOT proposed rules were inconsistent with Montana statutory and constitutional law. The PSC's eight page decision of October 1, 1990, concluded,

"The Commission is of the opinion that the types of testing adopted herein (reasonable cause, pre-employment and nonrandom return to duty) are consistent with Montana statutory and constitutional law. The Commission also considers the revised drug-testing rules to be reasonable and appropriate in view of the important governmental interest in assuring public safety in the pipeline industry."

I have a copy of the complete decision if the Committee wishes same.

In this bill there is at least an implication that federally mandated drug testing might be required for intrastate matters when that is not the intention of federal law.

Moreover, SB 31, which is currently in the Senate Judiciary Committee, was amended to deal with the concerns we are dealing with in HB 110 by adding a section which provides:

"Federal preemption of any part of this section shall strictly be limited to the specific scope of the federal preemption."

This give the supporters of HB 110 what they seek, while at the same time making it clear that federal regulations do not automatically intrude into those matters reserved for the State.

I urge you give HB 110 a "Do Not Pass". What HB 110 seeks to do is done by SB 31. If the committee is inclined to act on what is sought here, then the proposals included in HB 110 should be deleted, and the language above should be inserted in its place.

Thank you. I'll be glad to take questions at the conclusion of the hearing.

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FACT SHEET

SUBJECT: DEPARTMENT OF TRANSPORTATION (DOT) DRUG TESTING PROGRAM

The DOT is the first Executive agency to implement a Department-wide drug-free workplace program for civilian employees under Executive Order 12564 (Drug-Free Federal Workplace - Issued in September 1986). The DOT program was officially announced in June 1987. Testing began in September 1987.

The DOT program includes the following:

- broad education and awareness training
- an increase in supervisory training and the visibility of the employee assistance program
- a six-part forensic drug testing program to identify illicit drug use
- initiatives to foster and promote drug-free life styles among DOT employees.

Random drug testing of approximately 32,000 employees in critical safety and security positions is underway at more than 900 work sites. the remaining five categories of testing (reasonable suspicion, follow-up, voluntary, post-accident, and pre-employment) were phased in during the months following the implementation of the random testing program.

The chart below details DOT drug testing program statistics as of February 28, 1990. We have conducted 49,590 drug tests within the department.

TEST TYPE	NUMBER OF TESTS	NUMBER POSITIVE
RANDOM	30,960	152 0.49%
REASONABLE SUSPICION	21	11
FOLLOW-UP	1,938	43
POST-ACCIDENT	55	0
PRE-EMPLOYMENT (FAA)	16,249	63 0.38%
PRE-EMPLOYMENT (OTHER MODES)	315	0
VOLUNTARY	52	0

Of the 152 individuals who tested positive on the Random test, 99 have completed rehabilitation and have returned to their original position.

Testing under the random program will continue every month at a rate of approximately 50 percent of the total number of covered employees per year.

The total forecasted yearly cost of the DOT program is estimated at 5 million dollars. To date, collection costs have averaged \$125.00 per collection, and forensic testing has averaged \$25.00 per test.

April 26, 1990/drugfac

PIPELINE



SAFETY

REGULATIONS

PART 199

Current through Amendment 3

AND

PART 40

DRUG TESTING

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

TRANSPORTATION SAFETY INSTITUTE
PIPELINE SAFETY DIVISION
6500 SOUTH MACARTHUR BLVD. (DMA 607)
OKLAHOMA CITY, OKLAHOMA 73125

(405) 680-4643

Fax 680-3521

NOT AN OFFICIAL COPY

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

DATE 2/12/91
FILE HR3110
10-8-90

In the Matter of Amendment of) NOTICE OF AMENDMENT AND
Rule 38.5.2202 and Adoption) ADOPTION OF RULES REGARDING
of a New Rule Regarding) FEDERAL PIPELINE SAFETY
Investigation and Reports of) REGULATIONS INCLUDING
Accidents) DRUG-TESTING REQUIREMENTS
TO: All Interested Persons

1. On February 8, 1990 the Department of Public Service Regulation published Notice of Proposed Amendment and Adoption at page 275, issue number 3 of the 1990 Montana Administrative Register. Requests were received for a hearing and on April 12, 1990 the Department of Public Service Regulation published a Notice of Public Hearing to consider the above matter at page 698, issue number 7 of the 1990 Montana Administrative Register.

2. The Department of Public Service Regulation has adopted and amended the rule as proposed with the following changes:

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The public service commission hereby adopts and incorporates by reference the U.S. Department of Transportation Pipeline Safety Regulations, Code of Federal Regulations, Title 49, Chapter 1, Subchapter D, Parts 191, and 192, including all revisions and amendments enacted by the department of transportation on or before the effective date of this rule, October 12, 1990 and--199. A copy of CFR Title 49, Chapter 1, Subchapter D, Parts 191, and 192 and--199 may be obtained from the U.S. Department of Transportation, ~~Materials-Transportation-Bureau, Office of Operations--and--Enforcement,--(Pipeline--Safety)~~ Research and Special Programs Administration, Western Region, Pipeline Safety, 555 Zang Street, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 2701 Prospect Avenue, Helena, Montana 59620.

Comments: No comments were received regarding Parts 191 and 192. As adopted, ARM 38.5.2202 now incorporates the latest revisions to Parts 191 and 192. All comments received were regarding Part 199. Since substantial changes were made to Part 199 they have been adopted as new rules II through XIII.

3. The Commission has adopted the rule as proposed:
RULE I. 38.5.2220 INVESTIGATION AND REPORTS OF INCIDENTS OF INTRASTATE GAS PIPELINE OPERATORS

Comments: No comments were received.

4. The Commission has adopted the following new rules as stated above. Random and post-accident drug testing requirements are not being adopted. Other minor revisions to 49 C.F.R. 199 as proposed have also been made. Since the PSC does not enforce 49 C.F.R. Parts 193 and 195, all references to those parts have been deleted. Due to the date these rules are being adopted, § 199.1(b) is being deleted as unnecessary.

RULE II. 38.5.2301 SCOPE AND COMPLIANCE (1) This subchapter requires pipeline facilities subject to 49 Code of Federal Regulations (C.F.R.), Part 192 to test employees for the presence of prohibited drugs and provide an employee assistance program. However, this subchapter does not apply to "master meter systems" defined in 49 C.F.R. § 191.3.

(2) Nothing contained in this subchapter shall be construed or applied in a manner inconsistent with the provisions and requirements of § 39-2-304, MCA.

(3) This subchapter shall not apply to any person for whom compliance with this subchapter would violate the domestic laws or policies of another country.

(4) This subchapter is not effective until January 2, 1992, with respect to any person for whom a foreign government contends that application of this subchapter raises questions of compatibility with that country's domestic laws or policies. On or before December 2, 1991, the administrator will issue any necessary amendment resolving the applicability of this subchapter to such person on and after January 2, 1992.

AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE III. 38.5.2303 DEFINITIONS As used in this subchapter:

(1) "Accident" means an incident reportable under 49 C.F.R. part 191 involving gas pipeline facilities.

(2) "Administrator" means the administrator of the research and special programs administration (RSPA) of the U.S. department of transportation (DOT), or any person who has been delegated authority in the matter concerned.

(3) "DOT procedures" means the "procedures for transportation work place drug testing programs" published by the office of the secretary of transportation in 49 C.F.R. part 40.

(4) "Employee" means a person who performs on a pipeline, an operating, maintenance, or emergency-response function regulated by 49 C.F.R. part 192. This does not include clerical, truck driving, accounting, or other functions not subject to 49 C.F.R. part 192. The person may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor.

(5) "Fail a drug test" means that the confirmation test result shows positive evidence of the presence under DOT procedures of a prohibited drug in an employee's system. The testing procedure must provide for the verification of test results by two or more different testing procedures before judging a test positive.

(6) "Operator" means a person who owns or operates pipeline facilities subject to 49 C.F.R. part 192.

(7) "Pass a drug test" means that initial testing or confirmation testing under DOT procedures does not show evidence of the presence of a prohibited drug in a person's system.

(8) "Prohibited drug" means any of the following substances specified in schedule I or schedule II of the Controlled Substances Act, 21 U.S.C. 801.812 (1981 and 1987 Cum.P.P.): marijuana, cocaine, opiates, amphetamines, and

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phencyclidine (PCP). In addition, for the purposes of reasonable cause testing, "prohibited drug" includes any substance in schedule I or II if an operator has obtained prior approval from RSPA, pursuant to the "DOT procedures" in 49 C.F.R. part 40, to test for such substance, and if the department of health and human services has established an approved testing protocol and positive threshold for such substance.

(9) "State agency" means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1674) or section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2009). AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE IV. 38.5.2305 DOT PROCEDURES (1) The anti-drug program required by this subchapter must be conducted according to the requirements of this subchapter and the DOT procedures. In the event of conflict, the provisions of this subchapter prevail. Terms and concepts used in this subchapter have the same meaning as in the DOT procedures. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE V. 38.5.2307 ANTI-DRUG PLAN (1) Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this subchapter and the DOT procedures. The plan must contain:

(a) Methods and procedures for compliance with all the requirements of this subchapter, including the employee assistance program;

(b) The name and address of each laboratory that analyzes the specimens collected for drug testing; and

(c) The name and address of the operator's medical review officer; and

(d) Procedures for notifying employees of the coverage and provisions of the plan. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE VI. 38.5.2309 USE OF PERSONS WHO FAIL OR REFUSE A DRUG TEST (1) An operator may not knowingly use as an employee any person who:

(a) Fails a drug test required by this subchapter and the medical review officer makes a determination under ARM 38.5.2315(4)(b); or

(b) Refuses to take a drug test required by this subchapter.

(2) Paragraph (1)(a) of this rule does not apply to a person who has:

(a) Passed a drug test under DOT procedures;

(b) Been recommended by the medical review officer for return to duty in accordance with ARM 38.5.2315(3); and

(c) Not failed a drug test required by this subchapter after returning to duty. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE VII. 38.5.2311 DRUG TESTS REQUIRED: PRE-EMPLOYMENT, REASONABLE CAUSE AND RETURN TO DUTY (1) Each operator shall conduct the following drug tests for the presence of a prohibited drug:

(a) No operator may hire or contract for the use of any person as an employee unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirements of this subchapter.

(b) Each operator shall drug test each employee when there is reasonable cause to believe the employee is using a prohibited drug. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use. At least two of the employee's supervisors, one of whom is trained in detection of the possible symptoms of drug use, shall substantiate and concur in the decision to test an employee. The concurrence between the two supervisors may be by telephone. However, in the case of operators with 50 or fewer employees subject to testing under this subchapter, only one supervisor of the employee trained in detecting possible drug use symptoms shall substantiate the decision to test.

(c) An employee who refuses to take or does not pass a drug test may not return to duty until the employee passes a drug test administered under this subchapter and the medical review officer has determined that the employee may return to duty. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE VIII. 38.5.2313 DRUG TESTING LABORATORY (1) Each operator shall use for the drug testing required by this subchapter only drug testing laboratories certified by the department of health and human services under the DOT procedures.

(2) The drug testing laboratory must permit:

(a) Inspections by the operator before the laboratory is awarded a testing contract; and

(b) Unannounced inspections, including examination of records, at any time, by the operator, the administrator, and if the operator is subject to state agency jurisdiction, a representative of that state agency.

(3) Notwithstanding the above, a person tested may request retesting by a laboratory of his choice, pursuant to ARM 38.5.2317. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE IX. 38.5.2315 REVIEW OF DRUG TESTING RESULTS: MEDICAL REVIEW OFFICER (1) Each operator shall designate or appoint a medical review officer (MRO). If an operator does not have a qualified individual on staff to serve as MRO, the operator may contract for the provision of MRO services as part of its anti-drug program.

(2) The MRO must be a licensed physician with knowledge of drug abuse disorders.

(3) The MRO shall perform the following functions for the operator:

(a) Review the results of drug testing before they are reported to the operator.

(b) Review and interpret each confirmed positive test result as follows to determine if there is an alternative medical explanation for the confirmed positive test result:

(i) Conduct a medical interview with the individual tested.

(ii) Review the individual's medical history and any relevant biomedical factors.

(iii) Review all medical records made available by the individual tested to determine if a confirmed positive test resulted from legally prescribed medication.

(iv) If necessary, require that the original specimen be reanalyzed to determine the accuracy of the reported test result.

(v) Verify that the laboratory report and assessment are correct.

(c) Determine whether and when an employee who refused to take or did not pass a drug test administered under DOT procedures may be returned to duty.

(d) Ensure that an employee has been drug tested in accordance with the DOT procedures before the employee returns to duty.

(4) The following rules govern MRO determinations:

(a) If the MRO determines, after appropriate review, that there is a legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO is not required to take further action.

(b) If the MRO determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO shall refer the individual tested to an employee assistance program, or to a personnel or administrative officer for further proceedings in accordance with the operator's anti-drug program.

(c) Based on a review of laboratory inspection reports, quality assurance and quality control data, and other drug test results, the MRO may conclude that a particular drug test result is scientifically insufficient for further action. Under these circumstances, the MRO should conclude that the test is negative for the presence of a prohibited drug or drug metabolite in an individual's system.

(5) A copy of all drug test results shall be provided to the person tested.

(6) The person tested must be given the opportunity to rebut or explain the results of all drug tests and retests.
AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE X. 38.5.2317 RETENTION OF SAMPLES AND RETESTING

(1) Samples that yield positive results on confirmation must be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days as required by the DOT procedures. Within this 365-day period, the employee or his representative, the operator, the administrator, or, if

the operator is subject to the jurisdiction of a state agency, the state agency may request that the laboratory retain the sample for an additional period. If, within the 365-day period, the laboratory has not received a proper written request to retain the sample for a further reasonable period specified in the request, the sample may be discarded following the end of the 365-day period.

(2) The person tested must be provided the opportunity, at the expense of the operator, to obtain a confirmatory retest of the urine by an independent laboratory selected by the person tested.

(3) If the employee specifies retesting by a second laboratory, the original laboratory must follow approved chain-of-custody procedures in transferring a portion of the sample.

(4) Since some analytes may deteriorate during storage, detected levels of the drug below the detection limits established in the DOT procedures, but equal to or greater than the established sensitivity of the assay, must, as technically appropriate, be reported and considered corroborative of the original positive results. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE XI. 38.5.2319 EMPLOYEE ASSISTANCE PROGRAM

(1) Each operator shall provide an employee assistance program (EAP) for its employees and supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause. The operator may establish the EAP as a part of its internal personnel services or the operator may contract with an entity that provides EAP services. Each EAP must include education and training on drug use. At the discretion of the operator, the EAP may include an opportunity for employee rehabilitation.

(2) Education under each EAP must include at least the following elements: display and distribution of informational material; display and distribution of a community service hotline telephone number for employee assistance; and display and distribution of the employer's policy regarding the use of prohibited drugs.

(3) Training under each EAP for supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause must include one 60-minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE XII. 38.5.2321 CONTRACTOR EMPLOYEES (1) With respect to those employees who are contractors or employed by a contractor, an operator may provide by contract that the drug testing, education, and training required by this subchapter be carried out by the contractor provided:

(a) The operator remains responsible for ensuring that the requirements of this subchapter are complied with; and

(b) The contractor allows access to property and records by the operator, the administrator, and if the operator is sub-

2/12/91
HB 110

ject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of this subchapter. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE XIII. 38.5.2323 RECORDKEEPING (1) Each operator shall keep the following records for the periods specified and permit access to the records as provided by paragraph (2) of this rule:

(a) Records that demonstrate the collection process conforms to this subchapter must be kept for at least three years.

(b) Records of employee drug test results that show employees failed a drug test, and the type of test failed (e.g., post-accident), and records that demonstrate rehabilitation, if any, must be kept for at least five years, and include the following information:

(i) The functions performed by employees who failed a drug test.

(ii) The prohibited drugs which were used by employees who failed a drug test.

(iii) The disposition of employees who failed a drug test (e.g., termination, rehabilitation, leave without pay).

(iv) The age of each employee who failed a drug test.

(c) Records of employee drug test results that show employees passed a drug test must be kept for at least one year.

(d) A record of the number of employees tested, by type of test (e.g., post-accident), must be kept for at least five years.

(e) Records confirming that supervisors and employees have been trained as required by this subchapter must be kept for at least three years.

(2) Information regarding an individual's drug testing results or rehabilitation may be released only upon the written consent of the individual, or as required by a court of law. Statistical data related to drug testing and rehabilitation that is not name-specific and training records must be made available to the administrator or the representative of a state agency upon request. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

5. Comments: The Oil, Chemical and Atomic Workers International Union, Local 2-493 (OCAW) submitted written and oral comments in opposition to the random and post-accident drug testing requirements contained in the proposed rules. OCAW did not oppose the reasonable cause and nonrandom return-to-duty testing provisions. OCAW did not take a position on pre-employment testing.

The American Civil Liberties Union (ACLU) submitted written and oral comments in opposition to pre-employment and random drug-testing. At the hearing the ACLU also expressed some reservations regarding the scope of the proposed post-accident testing. The ACLU did not take a position on return-to-duty testing and did not oppose reasonable cause testing.

The ACLU's objections to pre-employment testing were not stated in specific terms. The ACLU's statement simply ex-

pressed general opposition to drug testing, based upon the intrusion of individual privacy and violation of constitutional rights. Drug tests are unfair if administered to workers without any reason to suspect illegal drug use; and unnecessary because they cannot detect actual job impairment. Drug tests are also sometimes inaccurate. Performance tests in safety-sensitive positions are more appropriate. Competent supervision, professional counseling and voluntary rehabilitation would better address the drug problem. Finally, the ACLU stated that § 39-2-304, MCA is a good law, probably the best in the country that balances the rights of individual privacy against the rights of the public interest.

The Montana Power Company did not take a position for or against the rules, but did offer oral comments and presented a copy of the company's anti-drug plan.

Response: The Commission has determined that the random and post-accident drug testing provisions of the proposed rules would violate § 39-2-304, MCA. These types of tests are therefore not being adopted in the Administrative Rules of Montana, including the random provisions of the return-to-duty testing.

In response to the ACLU's objections to pre-employment testing, the Commission first notes that the U.S. 9th Circuit Court of Appeals recently upheld 49 C.F.R. Part 199 against challenges based upon Federal law, including the 4th Amendment of the United States Constitution. IBEW v. Skinner, ___ F.2d ___, 1990 WL 129349 (Sept. 12, 1990). In addition, the Commission believes the pre-employment testing required by the proposed rules is permitted by § 39-2-304(1)(b), due to the nature of the pipeline industry and the functions performed by operations, maintenance and emergency response personnel.

The rules as proposed contain other provisions which are inconsistent with § 39-2-304, MCA, in the areas of testing procedure, verification, test review, retesting, and release of results. Appropriate revisions have been made to conform the rule as adopted to the requirements of § 39-2-304, MCA. A general provision has also been added requiring application and construction of these rules in a manner consistent with § 39-2-304, MCA.

The Commission is of the opinion that the types of testing adopted herein (reasonable cause, pre-employment and nonrandom return-to-duty) are consistent with Montana statutory and constitutional law. The Commission also considers the revised drug-testing rules to be reasonable and appropriate in view of the important governmental interest in assuring public safety in the pipeline industry.


HOWARD L. ELLIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 1, 1990.

ACLU OF MONTANA

AMERICAN CIVIL LIBERTIES UNION

P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1088

DRUG TESTING TESTIMONY

I am testifying as the Executive Director of the American Civil Liberties Union of Montana on behalf of my board of directors and the 800 families that pay dues to our organization so that we might work to preserve the protections afforded us by the Constitution and the Bill of Rights.

State Office
335 Stapleton Building
Billings, Montana 59101

BOB ROWE
President

SCOTT CRICHTON
Executive Director

JEFFREY T. RENZ
Litigation Director

There was a time in the United States when your business was also your boss's business. At the turn of the century, company snooping was pervasive and privacy almost non-existent. Your boss had the right to know who you lived with, what you drank, whether you went to church, or to what political groups you belonged. With the growth of the trade union movement and heightened awareness of the importance of individual rights, American workers came to insist that life off the job was their private affair not to be scrutinized by employers.

But major chinks have begun to appear in the wall that has separated life on and off the job, largely due to new technologies that make it possible for employers to monitor their employees off-duty activities. Today, millions of American workers every year, in both the public and private sectors, are subjected to urinalysis drug tests as a condition for getting or keeping a job.

The American Civil Liberties Union opposes indiscriminate urine testing because the process is both unfair and unnecessary. It is unfair to force workers who are not even suspected of using drugs, and whose job performance is satisfactory, to "prove" their innocence through a degrading and uncertain procedure that violates personal privacy. Such tests are unnecessary because they cannot detect impairment and, thus, in no way enhance an employer's ability to evaluate or predict job performance.

Employers have a right to expect their employees not to be high, stoned, drunk, or asleep. Job performance is the bottom line: If you cannot

to the work, employers have a legitimate reason for firing you. But urine tests do not measure job performance. Even a confirmed "positive" provides no evidence of present intoxication or impairment; it merely indicates that a person may have taken a drug at some time in the past.

Urine tests cannot determine precisely when a particular drug was used. They can only detect "metabolites," or inactive, leftover traces of previously ingested substances. For example, an employee who smokes marijuana on a Saturday night may test positive the following Wednesday, long after the drug has ceased to have any effect. In that case, what the employee did on Saturday has nothing to do with his or her fitness on Wednesday. At the same time, a worker can snort cocaine on the way to work and test negative that same morning. That is because the cocaine has not yet been metabolized and will, therefore, not show up in his urine.

You'll hear the question, "If you don't use drugs, you have nothing to hide- so why object to testing?" Innocent people do have something to hide: their private life. The "right to be left alone" is, in the words of the late Supreme Court Justice Louis Brandeis, "the most comprehensive of rights and the right most valued by civilized men."

Analysis of a person's urine can disclose many details about that person's private life other than drug use. It can tell an employer whether an employee or a job applicant is being treated for a heart condition, depression, epilepsy or diabetes. It can also reveal whether an employee is pregnant.

Drug screens are not completely reliable. These tests can and often do yield false positive results. The ACLU in Montana has heard stories from numerous individuals whose jobs require testing about how false positives have sent their lives into real disarray. Although more accurate testing is becoming available, it is expensive and less frequently used. And even the more accurate tests can yield inaccurate results due to laboratory error. A survey by the National Institute of Drug Abuse (NIDA) found that 20 percent of the labs surveyed mistakenly reported the presence of illegal drugs in drug-free urine samples. Unreliability also stems from the tendency of drug screens to confuse similar compounds. For example, codeine and Vicks Formula 44-M have been known to produce positive results for heroin, Advil for marijuana, and Nyquil for amphetamines.

Such testing may be the easiest way to identify drug users, but it is also the most un-American. Americans have traditionally believed that general searches of innocent people are unfair. This tradition began when King George's soldiers searched everyone indiscriminately in order to uncover those few people who were committing offenses against the Crown. Early Americans deeply hated these general searches, which were a leading cause of the Revolution.

After the Revolution, when memories of the experience with warrantless searches were still fresh, the Fourth Amendment was adopted. It says that the government cannot search everyone to find the few who might be guilty of an offense. The government must have good reason to suspect a particular person before subjecting him or her to intrusive body searches. These long-standing principles of fairness should apply to the private sector, even though the Fourth Amendment only applies to government action.

Urine tests are body searches, and they are an unprecedented invasion of privacy. The standard practice, in administering such tests, is to require employees to urinate in the presence of a witness to guard against specimen tampering. In the words of one judge, that is "an experience which even courteously supervised can be humiliating and degrading." Noted a federal judge, as he invalidated a drug-testing program for municipal firefighters, "Drug testing is a form of surveillance, albeit a technological one."

Shouldn't exceptions be made for certain workers such as airline pilots are responsible for the lives of others? Obviously, people who are responsible for others' lives should be held to high standards of job performance. But urine testing will not help employers do that because it does not detect impairment.

If employers in transportation and other industries are really concerned about the public's safety, they should abandon imperfect urine testing and test performance instead. Computer-assisted performance tests already exist and, in fact, have been used for years by NASA on astronauts and test pilots. These tests can actually measure hand-eye coordination and response time, do not invade people's privacy, and can improve safety far better than drug tests can.

Drug use costs industry millions in lost worker productivity each year. Don't employers have a right to test as a way of protecting their investment?

Actually, there are no clear estimates about the economic costs to industry resulting from drug use by workers. Proponents of drug testing claim the costs are high, but they have been hard pressed to translate that claim into real figures. And some who make such claims are manufacturers of drug tests, who obviously stand to profit from industry-wide urinalysis. In any event, employers have better ways to maintain high productivity, as well as to identify and help employees with drug problems. Competent supervision, professional counseling and voluntary rehabilitation programs may not be as simple as a drug test, but they are a better investment in America.

Our nation's experience with cigarette smoking is a good example of what education and voluntary rehabilitation can accomplish. Since 1965, the proportion of Americans who smoke cigarettes has gone down from 40.4 percent to 29.1 percent. This dramatic decrease was a consequence of public education and the availability of treatment on demand. Unfortunately, instead of adequately funding drug clinics and educational programs, the government has cut these services so that substance abusers sometimes have to wait for months before receiving treatment.

Many state and federal courts have ruled that testing programs in public workplaces are unconstitutional if they are not based on some kind of individualized suspicion. Throughout the country, courts have struck down programs that randomly tested police officers, fire-fighters, teachers, civilian army employees, prison guards and employees of several federal agencies. The ACLU and public employees unions have represented most of these victorious workers. In Washington, D.C., for example, one federal judge had this to say about a random drug testing program that would affect thousands of government employees: "This case presents for judicial consideration a wholesale deprivation of the most fundamental privacy rights of thousands upon thousands of loyal, law abiding citizens..."

In 1989, for the first time, the U.S. Supreme Court ruled on the constitutionality of testing government employees not actually suspected of

drug use. In two cases involving U.S. Customs guards and railroad workers, the majority of the Court held that urine tests are searches, but that these particular employees could be tested without being suspected drug users on the grounds that their Fourth Amendment right to privacy was outweighed by the government's interest in maintaining a drug-free workplace.

Although these decision represent a serious setback, the Court's ruling does not affect all government workers, and the fight over the constitutionality of testing is far from over.

Court challenges to drug testing programs in private workplaces are underway throughout the country. These lawsuits involve state constitutional and statutory laws rather than federal constitutional law. Some are based on common law actions that charge specific, intentional injuries; others are breach of contract claims. Some have been successful while others have failed. Traditionally, employers in the private sector have had extremely broad discretion in personnel matters.

In most states, private sector employees have virtually no protection against drug testing's intrusion on their privacy, unless they belong to a union that has negotiated the prohibition or restriction of workplace testing.

Montana is one of only eight states that has enacted protective legislation that restricts drug testing in the private workplace and gives employees some measure of protection from unfair and unreliable testing. Montana, Iowa, Vermont and Rhode Island have banned all random or blanket drug testing of employees (that is, testing without probable cause or reasonable suspicion), and Minnesota, Maine and Connecticut permit random testing only of employees in "safety sensitive" positions. The laws in these states also mandate confirmatory testing, use of certified laboratories, confidentiality of test results and other procedural protections. While they are not perfect, these new laws place significant limit on employers' otherwise unfettered authority to test and give employees the power to resist unwarranted invasions of privacy.

The ACLU will continue to press other states to pass similar statutes and to lobby the U.S. Congress to do the same.

I urge you to reject HB 110, 525, and 531.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

LABOR & EMPLOYMENT RELATIONS

COMMITTEE

BILL NO. HB 110

DATE 2/12/91 SPONSOR(S) Bob Gilbert

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
CURT LAINGEN	MT MOTOR CARRIERS ASSN	X	
Don Edwards	OCAW		X
Steve Browning	MT Motor Carriers Assn IBM	X	
Charles R. Brooks	MT HARDWARE + Imp Assn	X	
GUS TUTTLE	MT CHAUVEN	✓	
Don Judge	MT STATE AFL-CIO		X
Scott Crickard	ACLU		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Discussion:

REP. O'KEEFE said there are a number of REP. WHALEN'S amendments that haven't been moved because REP. THOMAS didn't want them. REP. WHALEN will probably finish amending HB 465 on the floor of the House. REP. THOMAS said there was only one of REP. WHALEN'S amendments that was not moved. REP. O'KEEFE asked REP. THOMAS if no additional amending was done to HB 465, would REP. WHALEN support the bill. REP. THOMAS guessed that he would.

REP. DRISCOLL asked Ms. McClure if the amendments put the Department back into compliance with the law. Ms. McClure said yes.

Vote: HB 465 DO PASS AS AMENDED. Motion carried unanimously.
EXHIBIT 2

EXECUTIVE ACTION ON HB 110

Ms. McClure presented and explained amendments. EXHIBIT 3

Motion: REP. WANZENRIED moved to amend HB 110.

Discussion:

REP. THOMAS stated REP. WANZENRIED worked with REP. GILBERT on the amendments and they are compatible.

REP. DRISCOLL said the bill as amended allows drug testing for pre-employment and anytime without reasonable cause. Ms. McClure said the drug testing would be a condition of employment or if the employer has reason to believe employee's faculties are impaired. REP. DRISCOLL stated he would never vote for random testing unless the truck driver could ask for a test from his boss.

REP. O'KEEFE said he supported the bill if it limited the testing to reasonable cause, renewal of license, and pre-employment but not random testing.

REP. WANZENRIED said to REP. DRISCOLL that it wasn't his intention to have random drug testing in the bill. It is a condition of employment and renewal of license. REP. DRISCOLL said Page 2, Line 5, says as a condition for continuation of employment, an employee must submit to a test. That allows testing to be done anytime by the employer without reason.

REP. HANSON said Page 1, Line 18, says, "May not require as a condition of continuation of employment." REP. DRISCOLL said the exception is truck drivers. Ms. McClure said the amendment on Page 2, Line 2, which says except for employment in jobs involving the "intra-state" commercial transportation, changes that. REP. DRISCOLL asked Ms. McClure if the bill required the \$300 test. Ms. McClure said she didn't know.

REP. DRISCOLL said 50 Advils will trigger marijuana on the \$40 test.

REP. WANZENRIED withdrew his motion and proposed to reconsider HB 110 when the committee reconvenes after the House Session. It appears that the Federal Regulations referenced provide for random testing. That is not the intention of the bill.

REP. DRISCOLL said there are two types of urine tests. Many people who take aspirin and Advil for heart conditions will trigger the \$40 test. It must be included that if a person fails the lower test they must take the full-screen test to find out exactly what it is.

CHAIR SQUIRES deferred executive action.

EXECUTIVE ACTION ON HB 525

Motion: REP. DRISCOLL moved to amend HB 525.

Discussion:

REP. DRISCOLL said the amendments remove "workplace." Anyone who wants to get cheaper insurance rates can take a urine test, get the results certified, and take the results to the insurance company. EXHIBIT 4

REP. THOMAS said the amendments change the bill to apply to anyone instead of an employee. REP. DRISCOLL said the bill would apply to any citizen that buys car insurance, who chooses to take the urine test. The discount would be twice as much as a person would receive for driver education. If the insurance company does not give a safe driver education discount it doesn't have to give the urine-test discount and vice versa.

Vote: Motion carried unanimously.

Motion/Vote: REP. DRISCOLL MOVED HB 525 DO PASS AS AMENDED.

Motion carried unanimously.

CHAIR SQUIRES recessed the hearing at 9:00 a.m. to reconvene upon adjournment of the House.

The Committee reconvened at 1:05 p.m. All members were present except Reps. O'Keefe, Hoffman, and Thomas.

HEARING ON HJR 29

Presentation and Opening Statement by Sponsor:

REP. CAROLYN SQUIRES, House District 58, Missoula, said HJR 29 deals with the Job Training Partnership Act and the dislocated worker portion. Montana has provided an effective program for dislocated workers but has been penalized. Because of being able

rehabilitation center of their choice to get true services. The rehabilitation providers will find a job for him or retrain him. Under the system if a minimum-wage job is found for the claimant and there is a significant wage loss, the claimant may be entitled to a wage supplement of \$150 per week up to 500 weeks. Then it is negotiated how much the settlement will be. No one ever tells the injured worker to wait and get rehabilitation.

EXECUTIVE ACTION ON HB 110

Motion: REP. THOMAS MOVED HB 110 DO PASS.

Discussion:

REP. WANZENRIED stated there was some concern regarding the federal regulations governing testing. He substituted amendments for Page 1 of Exhibit 3. EXHIBIT 7

Motion: REP. WANZENRIED moved to amend HB 110.

REP. DOLEZAL asked REP. WANZENRIED if the amendments address the Code of Federal Regulations (CFR), Part 40. REP. WANZENRIED said the concern was that the reference material 49 CFR 40, requires random drug testing. It does not. Drug testing would be on a pre-employment and biennial physical basis.

REP. COCCHIARELLA asked REP. WANZENRIED to explain who the employees would be on the second amendment of line 3. REP. WANZENRIED said the bill was directed toward individuals who are employed in commercial transportation of commodities and people on an intra-state basis.

Vote: Motion to amend carried unanimously of members present.

Motion: REP. WANZENRIED MADE A SUBSTITUTE MOTION THAT HB 110 DO PASS AS AMENDED.

Discussion:

REP. DRISCOLL asked REP. THOMAS if he thought Steve Browning would try to amend this bill on the Floor. REP. THOMAS said he didn't know.

REP. DRISCOLL asked if the bill was passed, will there be an attempt to change it back so random testing would be allowed. REP. WANZENRIED said he would only support the bill as written. If there is an attempt to change the limitations on the drug testing, he will do everything he can to make sure it does not become law.

Vote: HB 110 DO PASS AS AMENDED. EXHIBIT 8. Motion carried unanimously of members present.

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 2/16/91

[illegible][illegible]

HOUSE STANDING COMMITTEE REPORT

February 18, 1991

Page 2

Mr. Speaker: We, the committee on Labor report that House Bill 110 (first reading copy -- white) do pass as amended.

Signed: Carolyn Squires, Chairman

And, that such amendments read:

1. Title, line 7.

Following: "THE"

Insert: "INTRASTATE"

2. Title, lines 8 and 9.

Following: "COMMODITIES" on line 8

Strike: remainder of line 8 through "LAW" on line 9

3. Title, line 10.

Strike: "FEDERAL"

4. Title, line 10.

Following: "LAW;"

Insert: "DEFINING "INTRASTATE" AND "COMMERCIAL MOTOR CARRIER";"

5. Page 2, line 2.

Following: "the"

Insert: "intrastate"

6. Page 2, lines 3 and 4.

Following: "commodities" on line 3

Strike: remainder of line 3 through "law" on line 4

Insert: "by a commercial motor carrier or an employee subject to driver qualification requirements"

7. Page 2, lines 9 and 10.

Following: "use" on line 9

Strike: remainder of line 9 through "law" on line 10

Insert: ", except that drug testing may be conducted at an employee's regular biennial physical for employment in jobs involving the intrastate commercial motor carrier transportation of persons or commodities"

8. Page 2, line 13.

Following: "adopt"

Strike: "a"

Insert: "the"

9. Page 2, line 14.

Following: "procedure"

Insert: "that is provided in 49 CFR, part 40,"

10. Page 2, lines 15 through page 3, line 6.

Following: "testing." on line 15

Strike: remainder of line 15 through "law."

11. Page 3, line 22.

Following: line 21

Insert: "(6) As used in this section:

(a) "commercial motor carrier" has the meaning provided in 69-12-101; and

(b) "intrastate" means commerce or trade that is begun, carried on, and completed wholly in this state."

Amendments to House Bill No. 110
First Reading Copy

Requested by Rep. Wanzenried
For the House Committee on Labor and Employee Relations

Prepared by Eddy McClure
February 15, 1991

1. Title, line 10.
Following: "LAW;"
Insert: "DEFINING "INTRASTATE" AND "COMMERCIAL MOTOR CARRIER";"
 2. Title, line 11.
Following: "AN"
Insert: "APPLICABILITY DATE AND AN"
 3. Page 2, line 3.
Following: "commodities"
Insert: "by a commercial motor carrier"
 4. Page 2, line 13.
Following: "adopt"
Strike: "a"
Insert: "the"
 5. Page 2, line 14.
Following: "procedure"
Insert: "that is provided in 49 CFR, part 40,"
 6. Page 2, lines 15 through page 3, line 6.
Following: "testing." on line 15
Strike: remainder of line 15 through "law."
 7. Page 3, line 22.
Following: line 21
Insert: "(6) As used in this section:
(a) "commercial motor carrier" has the meaning provided in 69-12-101; and
(b) "intrastate" means commerce or trade that is begun, carried on, and completed wholly in this state."
- NEW SECTION. Section 2. Applicability. [This act] applies to intrastate motor carriers and persons who operate a commercial motor vehicle, as defined in 61-1-134, in intrastate commerce and are subject to the driver qualification requirements of this state [after the effective date of this act].
Renumber: subsequent section

Amendments to House Bill No. 110
White Reading Copy

Requested by Rep. Gilbert
For the Committee on

Prepared by Valencia Lane
January 9, 1991

1. Title, line 7.

Following: "THE"

Insert: "INTRASTATE"

2. Title, lines 8 and 9.

Following: "COMMODITIES" on line 8

Strike: remainder of line 8 through "LAW" on line 9

3. Title, line 10.

Strike: "FEDERAL"

4. Page 2, line 2.

Following: "the"

Insert: "intrastate"

5. Page 2, lines 9 and 10.

Following: "use" on line 9

Strike: remainder of line 9 through "law" on line 10

Insert: ", except that drug testing may be conducted at an
employee's regular biennial physical for employment in jobs
involving the intrastate commercial motor carrier
transportation of persons or commodities"

EXHIBIT 7

DATE 2/16/91

HB 110

Amendments to House Bill No. 110
First Reading Copy

Requested by Rep. Wanzenried
For the House Committee on Labor and Employee Relations

Prepared by Eddye McClure
February 15, 1991

1. Title, line 10.

Following: "LAW;"

Insert: "DEFINING "INTRASTATE" AND "COMMERCIAL MOTOR CARRIER";"

2. Page 2, line 3.

Following: "commodities"

Insert: "by a commercial motor carrier or an employee subject to
driver qualification requirements"

3. Page 2, line 13.

Following: "adopt"

Strike: "a"

Insert: "the"

4. Page 2, line 14.

Following: "procedure"

Insert: "that is provided in 49 CFR, part 40,"

5. Page 2, lines 15 through page 3, line 6.

Following: "testing." on line 15

Strike: remainder of line 15 through "law."

6. Page 3, line 22.

Following: line 21

Insert: "(6) As used in this section:

(a) "commercial motor carrier" has the meaning provided in
69-12-101; and

(b) "intrastate" means commerce or trade that is begun,
carried on, and completed wholly in this state."

EXHIBIT 8
DATE 2/16/91
HB 110

Amendments to House Bill No. 110
First Reading Copy

Requested by Rep. Wanzenried
For the House Committee on Labor and Employee Relations

Prepared by Eddye McClure
February 15, 1991

1. Title, line 7.
Following: "THE"
Insert: "INTRASTATE"
2. Title, lines 8 and 9.
Following: "COMMODITIES" on line 8
Strike: remainder of line 8 through "LAW" on line 9
3. Title, line 10.
Strike: "FEDERAL"
4. Title, line 10.
Following: "LAW,"
Insert: "DEFINING "INTRASTATE" AND "COMMERCIAL MOTOR CARRIER": "
5. Page 2, line 2.
Following: "the"
Insert: "intrastate"
6. Page 2, lines 3 and 4.
Following: "commodities" on line 3
Strike: remainder of line 3 through "law" on line 4
Insert: "by a commercial motor carrier or an employee subject to
driver qualification requirements"
7. Page 2, lines 9 and 10.
Following: "use" on line 9
Strike: remainder of line 9 through "law" on line 10
Insert: ", except that drug testing may be conducted at an
employee's regular biennial physical for employment in jobs
involving the intrastate commercial motor carrier
transportation of persons or commodities"

8. Page 2, line 13.

Following: "adopt"

Strike: "a"

Insert: "the"

9. Page 2, line 14.

Following: "procedure"

Insert: "that is provided in 49 CFR, part 40,"

10. Page 2, lines 15 through page 3, line 6.

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Strike: remainder of line 15 through "law."

11. Page 3, line 22.

Following: line 21

Insert: "(6) As used in this section:

(a) "commercial motor carrier" has the meaning provided in 69-12-101; and

(b) "intrastate" means commerce or trade that is begun, carried on, and completed wholly in this state."

2/16/91

2/16 Labor Committee

My proxy
for Fred Thomas

Ray D. Thomas

2/16/91

My Proxy on all
votes in favor of
Ed Delgado

79 Ruff

110 ~~aye~~

Representative O'Keefe said the increased reinstatement fees have already been put into the budget for DUI, and that Appropriations will be \$200,000 in the hole if HB 494 does not pass.

HEARING ON HOUSE BILL 110

Presentation and Opening Statement by Sponsor:

Representative Bob Gilbert, District 22, said HB 110 is a drug-testing bill for Montana employees of motor carriers, and brings Montana into compliance with federal regulations. He explained that, right now, motor carriers are in violation of state law if they follow federal law, and vice versa. Representative Gilbert provided an amended to correct a conflict with SB 31 (Exhibit #8a).

Proponents' Testimony:

Representative Dave Wanzenried, District 7, said the bill was very carefully drafted, and requested that it do pass.

Curt Laingen, Montana Motor Carriers Association, said he represents 300 Motor Carrier members, 200 logging truck carriers, and 150 livestock carriers who are responsible for 90 percent of intrastate commerce. He stated the drug-testing program is important, and read from prepared testimony in support of the bill (Exhibits #9 and #10).

Dan Edwards, International Representative, Oil, Coal, and Atomic Workers (OCAW), read from a prepared statement (Exhibit #11). He also provided supporting testimony from Jeffrey Renz, American Civil Liberties Union (ACLU) (Exhibit #12).

Mr. Edwards told the Committee he assumed that Exxon would be present asking for special consideration, and that they may be tempted to allow a proposed amendment. He asked the Committee to resist an Exxon amendment, and said he did not want all the work in SB 31 to be for naught.

Byron Roberts, Transportation Division, Montana Department of Commerce, said the bill allocates funds, and assists the transit system in the state via drug-testing rules. He explained that there are no drug testing rules now, and that a rule was enacted applying to the 14 largest cities in Montana, allowing them to do five kinds of drug tests. He said sanctions would be through administrative rule.

Mr. Roberts stated that Montana could have lost \$5.7 million in federal dollars, but a federal court declared the UMPTA rules void. He said bills were introduced in both Houses of Congress, but were defeated, and that the U.S. Department of Transportation is now trying to provide rules for this same authority the appellate courts said they did not have. Mr. Roberts said he feels

it is essential that the bill be amended on page 3, line 21, as requested by Representative Gilbert. He explained that he did not want to be in the same situation as before.

Dan _____, representing the Montana Transit Association, state his support of HB 110 (Exhibit #14).

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

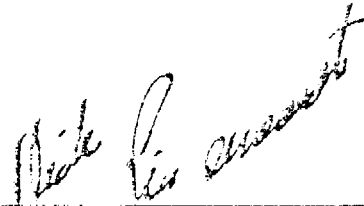
Senator Halligan asked if the OCAW supported the Department of Commerce amendment. Dan Edwards replied they did not, but supported Representative Gilbert's amendment.

Closing by Sponsor:

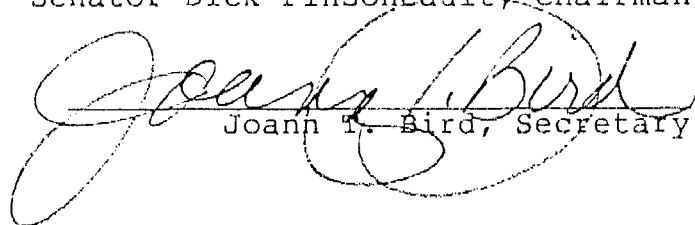
Representative Gilbert asked the Committee to please support HB 110 and his amendment, but not take the other two amendments proposed.

ADJOURNMENT

Adjournment At: 12 noon.



Senator Dick Pinsoneault, Chairman



Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991

Date 7/ Mar 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen			
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

Amendments to House Bill No. 110
Third Reading Copy (BLUE)

Requested by Rep. Gilbert
For the Committee on Judiciary

Prepared by Valencia Lane
March 19, 1991

1. Page 4, line 10.

Following: line 9

Insert: "NEW SECTION. Section 3. Coordination instruction. If Senate Bill No. 31 is passed and approved and if it includes a section that amends 39-2-304, then 39-2-304 as it appears in [this act] is amended by adding a new subsection (6) that reads:

"(6) Intrastate commercial motor carriers involved in the transportation of persons or commodities are exempt from the provisions of [subsections (2) through (4) of 39-2-304 as they appear in Senate Bill No. 31] and are exempt from [sections 2 through 4 and 6 of Senate Bill No. 31]. Prior to the administration of a drug or alcohol test, an intrastate commercial motor carrier involved in the transportation of persons or commodities shall adopt the written testing procedure that is provided in 49 CFR, part 40, and make it available to all persons subject to testing.""

CX #7
31 Mar 91
HB 110

Date submitted: 3-21-91
HB 110
Curt Laingen

Mister Chairman.....Members of the Committee, for the record, my name is Curt Laingen, Director of Safety for the Montana Motor Carriers Association.

A very important part of the commercial trucking industry's safety program is the drug testing program and MMCA strongly supports the passage of HB 110. Without its passage, the intrastate motor carrier industry cannot carry out the mandated federal transportation drug testing program in Montana.

MMCA has some 300 motor carrier members, 90% of whom operate in interstate commerce; some 200 log trucking members and some 150 livestock haulers, 90% of whom operate solely in intrastate commerce. Many of the interstate motor carrier members operate in both interstate and intrastate commerce. As of December 21, 1990, all interstate carriers and single owner operators must comply with federal drug testing requirements. Since early 1989, Montana Motor Carriers Association has been active in the formation and implementation of motor carrier drug testing programs.

Under current Federal Department of Transportation Motor Carrier Safety Regulations, all operators...employee drivers and independent owner-operators...of interstate commercial motor vehicles, those over 26,000 pounds gross weight and those under 26,000 pounds transporting people and/or hazardous materials, must be subject to a qualified drug testing program. The Federal rules stipulate that the motor carrier employer, must institute a drug testing program under the strict parameters set out in federal rules (CFR Part 40).

For the information and benefit of the committee, I have attached a copy of the federal rules to this statement.

The rules spell out specific requirements for a drug testing policy to be adopted by the carrier, the drugs to be tested for, collection site procedures, testing and reporting procedures, and under what circumstances tests are to be performed.

Montana has adopted most all the Federal DOT Motor Carrier Safety Regulations for operation by intrastate motor carriers of commodities and passengers except the regulations dealing with drug testing.

Ex. 9
21 Mar 91
HB 110

Under Montana law, intrastate carriers are precluded from requesting urine samples as a condition for employment and continuous employment. Only probable cause is grounds for testing under the current law.

Motor carriers in Montana are faced with a serious problem of how to establish and comply with a drug-free operation when their drivers operating in Montana cannot be tested. HB 110 is attempting to change a present law that mandates a policy to which the Legislature and our Courts must adhere that says, in effect, that all drug user drivers, weeded out of interstate motor carriage, can operate freely in Montana's intrastate motor carriage industry. Is this what we want?

Under this policy, the transportation industry and the federal government are mandating a drug-free transportation system to protect the public, while it would appear that Montana's transportation slogan is, "Come drive in Montana, where a driver can rest....cause we don't test."

Intrastate bus drivers can transport passengers without being tested and worse, "contracted for" school bus drivers do not have to be tested. It is hard to imagine that anyone can feel comfortable with that kind of policy.

A Montana carrier is concerned enough about his business and the well-being of his employees to conduct strict interviews, employee background checks and maintain a high standard for employment, but cannot complete the driver screening process to include drug testing.

HB 110 does not allow for random testing nor post accident testing, which may be addressed by opponents to this bill. HB110 will only allow drug testing for pre-employment, biennial (periodic) and reasonable cause.

Statistics show a low percentage of positive test results. Why the low percentage of positive results? Simple. The Federal mandated testing program is bringing a new awareness to substance abuse and people are either abstaining from drug use or in some cases are simply "cleaning up their act" prior to their scheduled test.

HB 110, allowing the drug testing of commercial transportation employees, is a needed and necessary piece of legislation in Montana. With its adoption, Montana can be free to consider the adoption, by reference, of the Federal DOT Controlled Substances Testing rules. I strongly urge your do pass recommendation for HB110. I'd be happy to answer any questions the committee may have. Thank you.

Senate
Judiciary

EX #10
21 Mar 91
HB 110

EMPLOYER'S GUIDE TO
49 CFR PART 40

PROCEDURES FOR
TRANSPORTATION WORKPLACE
DRUG TESTING PROGRAMS

FINAL RULE DECEMBER 1, 1989

U.S. Department of
Transportation

Office of the Secretary
of Transportation

400 Seventh St., S.W.
Washington, D.C. 20590
(202)366-DRUG

October 1990



Oil, Chemical & Atomic Workers
International Union, AFL-CIO



Dan C. Edwards
International Representative
P.O. Box 21635
Billings, MT 59104

406 / 669-3253 (Home)

EX H 11
21 Mar 91
HB 110

H. B. 110

Testimony of:

Dan C. Edwards, International Representative
Oil, Chemical and Atomic workers Int'l Union, AFL-CIO
P.O. Box 21635
Billings, MT 59104

Testifying March 21, 1991, before the Senate Judiciary Committee
in SUPPORT of HB 110.

My message to this Committee is short and to the point:
PASS THIS BILL WITH NO AMENDMENTS!!

I don't need to tell this Committee about all the hard work
that went into the discussions regarding SB-31 and SB-138,
and the resulting compromise that came out of committee
as SB-31. Thanks to the attempts to further amend SB-31
by Exxon and the Montana Department of Commerce, that Bill
is in serious trouble in the House Labor Committee.

I can only assume that Exxon will be here today to attempt
to again get the special consideration it believes is its
God given right. You have heard from Exxon before and nothing
has changed. PLEASE CONTINUE TO RESIST EXXON'S AMENDMENTS.

I also assume that the Montana Department of Commerce will
be here today as well. They were at House Labor with a
cock and bull story that sent at least a couple of the committee
members into a panic that the State was about to lose millions
of dollars in federal money. As Senator Towe so eloquently
explained to the House Labor Committee, their concerns are
simply unfounded. I will provide the Committee with testimony
from Jeff Renz on this issue prepared for the Hearing on
SB-31. The same comments are applicable here today.

I also give you more details why you shouldn't buy the State's
arguments here:

DEPARTMENT OF COMMERCE AMENDMENT:

I think it is important to go into more detail why this Committee should not buy the arguments of the State Department of Commerce.

First, the State should take the lead and stand up to the Federal government and defend Montana's citizens constitutional right to privacy when there is a question regarding the federal governments rights to require urine drug testing. The State should be urging your support of SB 31, not bowing to the federal government.

If the Department of Commerce language should be adopted, it will shift the burden of standing up to the federal government from State and Local government to the individual employee. Which, unfortunately, is exactly what this federal government wants

A situation very similar to that which the State Department of Commerce raises has already occurred in Montana. In 1990 the Research and Special Programs Administration of the federal Department of Transportation (RSPA/DOT) advised the Montana Public Service Commission that they were required to adopt RSPA/DOT's regulation covering interstate pipelines to apply to intrastate pipelines. This Union and the Montana ACLU challenged that action. After a hearing before the Montana Public Service Commission and legal briefing, the Montana Public Service Commission appropriately ruled that certain provisions of the RSPA/DOT proposed rules were inconsistent with Montana statutory and constitutional law. The PSC's eight page decision of October 1, 1990, concluded,

"The Commission is of the opinion that the types of testing adopted herein (reasonable cause, pre-employment and nonrandom return to duty) are consistent with Montana statutory and constitutional law. The Commission also considers the revised drug-testing rules to be reasonable and appropriate in view of the important governmental interest in assuring public safety in the pipeline industry."

I have a copy of the complete decision if the Committee wishes same.

The important thing to remember here is that even though the same threats to the State were made in the case of RSPA, no federal funds have been withheld. Another important point to remember is that, as there was with the RSPA edict, there is a serious question whether UMTA has the authority to force the State to act. The question of this lack of authority applies in the case of UMTA, even more than in the case of RSPA.

Ex. 11

3-21-91

HB 110

UMTA has previously tried, unsuccessfully, to impose such regulations. The U.S. Court of Appeals for the District of Columbia ruled that UMTA did not have the rule making authority to impose its rules. UMTA then attempted to get a law through Congress to give it authority to implement its desired regulations. This too was unsuccessful.

Two things are clear regarding UMTA. (1) UMTA is not about to pull federal funding until Congress gives it clear authority to impose its urine drug testing requirements on states. (2) Even if in the future Congress should give clear authority, the State legislature has to have an opportunity to change any conflicting State law that isn't preempted, after that authority has been given. In other words, we don't have to cross that bridge until we come to it. It should be noted that Congress has yet to expressly authorized urine drug testing.

If, in fact, UMTA should be given a clear mandate by Congress, then the State law, current law or as amended by SB 31, would be preempted. SB 31 was specifically worded to take such preemption into consideration.

I urge you give SB 31 a "Do Pass" with NO AMENDMENTS.

Thank you. I'll be glad to take questions at the conclusion of the hearing.

EX #12
21 Mar 91
HB110

ACLU OF MONTANA

AMERICAN CIVIL LIBERTIES UNION

0 BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-108

March 20, 1991

Labor Committee
Montana House of Representatives

State Office
335 Stapleton Bldg.
Billings, Montana 591

BOB ROWE
President

SCOTT CRICHTON
Executive Director

JEFFREY T. RENZ
Litigation Director

TESTIMONY OF JEFFREY T. RENZ
Legal Director, ACLU of Montana

I. Proposed Changes Regarding Federal Pre-emption.

Last year, the Montana Public Service Commission courageously refused to implement urine-testing requirements for intra-state pipeline workers demanded by the Department of Transportation. Those requirements would have trampled upon the right of privacy in the Montana Constitution.

I presented testimony at the hearing on those proposed regulations. My research convinced me of several important points:

1. Although asked repeatedly, and although various pieces of legislation had been offered, Congress has never enacted legislation expressly authorizing urine testing, with the exception of criminal law.

2. In the absence of such express authorization, the Bush Administration cannot compel the States to implement urine-testing policies, especially where such policies would violate the State's organic law, e.g. Montana's right to privacy.

3. The Bush Administration has attempted to force urine testing upon the states by including words in their regulations that say that the regulations preempt state law. These words are meaningless in the absence of express Congressional authorization.

The P.S.C. decision is a good case in point. There the P.S.C. essentially assumed the burden of standing up to pushy federal bureaucrats.

The proposed amendments to SB 31 would shift the burden of challenging the federal government from the State to the worker. That's unfair.

II. Pre-employment Drug Testing.

Because of the risks of abuse, the Committee should amend SB 31 to delete expanded pre-employment testing.

JEFFREY T. RENZ

HOUSE BILL 110
TESTIMONY

EX # 13
21 Mar 91
HB 110

Before the Senate Judiciary Committee
by the Montana Department of Commerce

On November 1, 1988, the Urban Mass Transportation Administration (UMTA) of the U.S. Department of Transportation published Regulation 49 CFR, Part 653 establishing mandatory drug testing of employees of public bus systems receiving Federal funding. This rule applied to transportation systems in 14 Montana communities, including city bus systems in Billings, Great Falls, Missoula, Butte, Helena and Kalispell. The UMTA rule mandated that local transit systems implement five categories of drug testing including pre-employment, reasonable cause, following an accident, on a random basis, and returning to duty following a positive test.

Sanctions for not complying with this rule included termination of Federal funding for transit. Montana was in the position of losing up to 5.7 million annually in transportation funding to Montana communities. Rules were to have gone into effect on December 21, 1990.

Fortunately, on January 19, 1990, the U.S. Court of Appeals for the District of Columbia issued a decision stating that UMTA did not have rule making authority in the area of public safety necessary to impose these requirements, and thereby, invalidating mandatory drug testing within the transit industry.

To remedy this situation, bills were introduced in both houses of Congress to reestablish these regulations in the form of law. These proposals would have preempted state law; however, the proposals were defeated.

The U.S. Department of Transportation is now proposing to introduce legislation to provide UMTA rule making authority. This would again put transportation systems in Montana in jeopardy of losing Federal funds, since it is questionable whether these rules would preempt state law. Sanctions again would mean loss of federal subsidies.

For this reason, it is essential that House Bill 110 be amended to provide transit operators authority to implement federally mandated drug testing.

In order to accomplish this, the following amendment to House Bill 110 is proposed:

Page 3, Line 21

(4) THIS ACT SHALL NOT RESTRICT DRUG TESTING OF SENSITIVE SAFETY TRANSPORTATION EMPLOYEES IF SUCH TESTING IS REQUIRED BY THE U.S. DEPARTMENT OF TRANSPORTATION AND IF NONCOMPLIANCE WOULD RESULT IN LOSS OF FEDERAL FUNDS.

We respectfully urge your inclusion of this amendment and passage of House Bill 110.



21 Mar 91
HB 110

Montana Transit Association

House Bill 110

~~SENATE BILL 111~~

TESTIMONY

The U. S. Department of Transportation is proposing to introduce legislation to provide UMTA rule making authority. This would again put transportation systems in Montana in jeopardy of losing Federal funds, since it is questionable whether these rules would preempt state law. Sanctions again would mean loss of federal subsidies.

Fourteen Montana public bus systems are affected by this bill, including urbanized public transit systems in Billings, Butte, Helena, Great Falls, Missoula, and Kalispell. A loss of federal funds through UMTA will surely jeopardize the future of transportation in these communities and will affect transit passengers who may lose the service upon which they rely.

For this reason it is essential that ~~SENATE BILL 111~~ ^{HOUSE BILL 110} be amended in the House to provide transit operators authority to implement federally mandated drug testing.

In order to accomplish this, the following amendment to ~~SENATE BILL 111~~ ^{HOUSE BILL 110} is proposed:

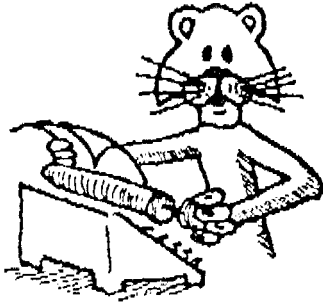
Page ³ 21, Line ²¹ 8

- (4) ~~DO NOT~~ THIS ACT SHALL NOT RESTRICT DRUG TESTING OF SENSITIVE SAFETY TRANSPORTATION EMPLOYEES IF SUCH TESTING IS REQUIRED BY THE U. S. DEPARTMENT OF TRANSPORTATION AND IF NONCOMPLIANCE WOULD RESULT IN LOSS OF FEDERAL FUNDS. ~~FEDERAL PREEMPTION OF ANY PART OF THIS SECTION MUST BE NARROWLY CONSTRUED TO LIMIT THE EXTENT OF FEDERAL PREEMPTION.~~

The officers and members of the Montana Transit Association respectfully urge your inclusion of this amendment and passage of ~~SENATE BILL 111~~ ^{HOUSE BILL 110}.

Respectfully Submitted,

Mary G. Plunley
Officer
Montana Transit Association



mountain line

Missoula Urban Transportation District
1221 Shakespeare, Missoula, Montana 59802 (406) 543-8388

HOUSE BILL 110

TESTIMONY

The U. S. Department of Transportation is proposing to introduce legislation to provide UMTA rule making authority. This would again put transportation systems in Montana in jeopardy of losing Federal funds, since it is questionable whether these rules would preempt state law. Sanctions again would mean loss of federal subsidies.

The Missoula Urban Transportation District (MUTD) could not maintain its current level of service if federal funds were withheld. The MUTD currently receives \$322,000 in federal annual operating assistance. Additionally, up to 80% of the MUTD's capital needs are funded with federal assistance. A loss of these funds will surely jeopardize the MUTD's future and will have an immediate negative impact upon the system's passengers and to the Missoula community.

For this reason it is essential that ~~HOUSE BILL 110~~ ^{HOUSE BILL 110} be amended in the House to provide transit operators authority to implement federally mandated drug testing.

In order to accomplish this, the following amendment to ~~HOUSE BILL 110~~ ^{HOUSE BILL 110} is proposed:

Page ~~1~~ ³ Line ~~1~~ ²¹

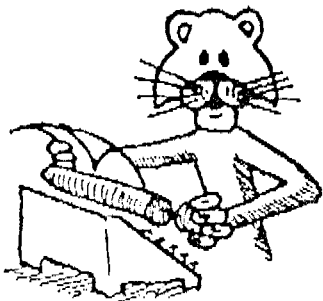
- (4) ~~110~~ THIS ACT SHALL NOT RESTRICT DRUG TESTING OF SENSITIVE SAFETY TRANSPORTATION EMPLOYEES IF SUCH TESTING IS REQUIRED BY THE U. S. DEPARTMENT OF TRANSPORTATION AND IF NONCOMPLIANCE WOULD RESULT IN LOSS OF FEDERAL FUNDS. ~~FEDERAL PREEMPTION OF ANY PART OF THIS SECTION MUST BE NARROWLY CONSTRUED TO LIMIT THE EXTENT OF FEDERAL PREEMPTION.~~

We respectfully urge your inclusion of this amendment and passage of ~~HOUSE BILL 110~~.

~~HOUSE BILL 110~~

Respectfully Submitted,

Mary G. Blumley
General Manager



mountain line

Missoula Urban Transportation District
1221 Shakespeare, Missoula, Montana 59802 (406) 543-8386

HOUSE Bill 110

TESTIMONY

The U. S. Department of Transportation is proposing to introduce legislation to provide UMTA rule making authority. This would again put transportation systems in Montana in jeopardy of losing Federal funds, since it is questionable whether these rules would preempt state law. Sanctions again would mean loss of federal subsidies.

The Missoula Urban Transportation District (MUTD) could not maintain its current level of service if federal funds were withheld. The MUTD currently receives \$322,000 in federal annual operating assistance. Additionally, up to 80% of the MUTD's capital needs are funded with federal assistance. A loss of these funds will surely jeopardize the MUTD's future and will have an immediate negative impact upon the system's passengers and to the Missoula community.

For this reason it is essential that ~~the bill~~ ^{House Bill 110} be amended in the House to provide transit operators authority to implement federally mandated drug testing.

In order to accomplish this, the following amendment to ~~the bill~~ ^{House Bill 110} is proposed:

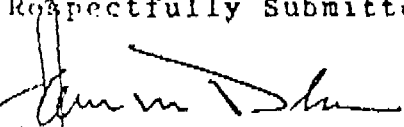
Page ³ ~~2~~, Line ²¹ ~~20~~

- (4) ~~(b)~~ THIS ACT SHALL NOT RESTRICT DRUG TESTING OF SENSITIVE SAFETY TRANSPORTATION EMPLOYEES IF SUCH TESTING IS REQUIRED BY THE U. S. DEPARTMENT OF TRANSPORTATION AND IF NONCOMPLIANCE WOULD RESULT IN LOSS OF FEDERAL FUNDS. FEDERAL PREEMPTION OF ANY PART OF THIS SECTION MUST BE NARROWLY CONSTRUED TO LIMIT THE EXTENT OF FEDERAL PREEMPTION.

We respectfully urge your inclusion of this amendment and passage of ~~the bill~~

^{House Bill 110}

Respectfully Submitted,


James M. Dolan
Chairperson
MUTD Board of Directors

3-21-91

Indicium

VISITORS' REGISTER

[illegible]

Senator Svrcek commented that this was discussed as "in a community-based program" yesterday. He asked what the difference is between "local community" and "local level".

Senator Towe's motion to amend HB 631 carried unanimously.

Senator Crippen asked if a judge could still defer or suspend a sentence. John Connor replied he or she could.

Recommendation and Vote:

Senator Doherty made a motion that HB 631 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 110

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Towe made a motion to approve the coordination instructions (with SB 31). The motion carried unanimously.

Recommendation and Vote:

Senator Mazurek made a motion that HB 110 BE CONCURRED IN AS AMENDED.

Senator Crippen asked how SB 31 is related to HB 110. Senator Towe replied HB 110 refers to intrastate , and provides for a testing procedure in 49C of Part 40. He said HB 110 does most of what SB 31 would do.

The motion made by Senator Mazurek carried unanimously. Senator Towe was asked to carry the bill.

EXECUTIVE ACTION ON HOUSE BILL 847

Motion:

There was no motion on HB 847.

Discussion:

Valencia Lane reported that Senator Towe asked her to do a considerable amount of work on the bill. She requested that the Committee pass it for the day, and Chairman Pinsoneault agreed.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

There was no recommendation or vote.

EXECUTIVE ACTION ON HOUSE BILL 839

Motion:

Discussion:

Senator Halligan said a lot of people are lost to treatment when there is only 10-day jurisdiction on DUI and 60-day jurisdiction on per se.

Senator Mazurek said Lewis and Clark County imposes a six-month jail sentence, deferring all but 10 days which is held over the heads of those sentenced to treatment programs.

John Connor told the committee HB 839 is related to a House bill on voyeurism which was killed in the House. He said it runs afoul of jurisdiction statutes of justice courts, which "sort of negates the intent".

Amendments, Discussion, and Votes:

There were none.

Recommendation and Vote:

Senator Halligan made a motion that HB 839 be TABLED. The motion carried with all members voting aye except Senators Towe, Harp and Brown who voted no.

EXECUTIVE ACTION ON HOUSE BILL 173

Motion:

Discussion:

Senator Mazurek said the bill makes it clear that once a charge has been made in the investigation of a justice, it is opened up to the public.

Steve Brown, Helena attorney, advised the Committee that the 1972 Constitution provides for the Judicial Standards Commission to

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1991

Date 23 Mar 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 23, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 110 (third reading copy -- blue), respectfully report that House Bill No. 110 be amended and as so amended be concurred in:

1. Page 4, line 13.

Following: line 9

Insert: "NEW SECTION. Section 3. Coordination instruction. If Senate Bill No. 31 is passed and approved and if it includes a section that amends 39-2-304, then 39-2-304 as it appears in [this act] is amended by adding a new subsection (5) that reads:

"(5) Intrastate commercial motor carriers involved in the transportation of persons or commodities are exempt from the provisions of [subsections (2) through (4) of 39-2-304 as they appear in Senate Bill No. 31] and are exempt from [sections 2 through 4 and 6 of Senate Bill No. 31]. Prior to the administration of a drug or alcohol test, an intrastate commercial motor carrier involved in the transportation of persons or commodities shall adopt the written testing procedure that is provided in 49 CFR, part 40, and make it available to all persons subject to testing.""

Signed: _____
Richard Pinsonneault, Chairman

141 3-23-91
Amd. Coord.

SB 3-23-91
Sec. of Senate